THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 04.07.2007

+ **WP(C) No.10254/2006**

SMT GANNY KAUR ...Petitioner

- versus -

THE STATE (NCT) & OTHERS ...Respondents

Advocates who appeared in this case:

For the Petitioner	:	Mr Gurbaksh Singh
For the Respondent No.2.	:	Mr R. P. Sharma
For the Respondent No.3	:	Mr O. P. Arya

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes

2. To be referred to the Reporter or not ? Yes

3. Whether the judgment should be reported in Digest ? Yes

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition raises the interesting question as to whether compensation granted by the State for the 1984 Riot victims should be given to persons in accordance with their entitlement to inherit property from the deceased persons as per the Hindu Succession Act, 1956 or that the State is not governed by the personal laws and is required to award compensation equitably to the next of kin ?

2. The petitioner (Smt Ganny Kaur) was married to Late Ladha Singh. They had a daughter (Ishwari Kaur) who was married to one Laxman Singh. Laxman Singh is the son of Kishan Singh (Respondent No.3) herein. Ishwari Kaur and Laxman Singh had two children, Sajan Singh and Laxmi. In the unfortunate events which took place in 1984 and which go under the name 'The 1984 Riots', Ishwari Kaur, Laxman Singh and their two children were burnt to death by the rioters. The entire family of four perished at the hands of the murdering marauders. At that point of time, Sajan Singh was four years old and Laxmi was two years old.

3. After the 1984 Riots, the Government of NCT of Delhi (Respondent No.1) sanctioned an *ex gratia* payment of Rs 10,000/- to the surviving family members of each riot victim. This amount was subsequently enhanced to Rs 20,000/-. It is stated by the petitioner that she had been living in a distant village. Therefore, all the compensation amount was claimed by Kishan Singh (Respondent No.3) and the same was paid to him. After Bhajan Kaur's case, this court had directed the Government to pay a sum of Rs 3.5 lakhs to the family members of the victims of the 1984 Riots. On the basis of the said judgment, a further compensation was to be awarded. The petitioner filed the claim with the respondent No.2, but as the respondent No.2 was not inclined to pay compensation to the petitioner with respect to the death of her daughter and two grand children. The petitioner, finding no alternative,

filed a writ petition before this court being CW 3123/1998. By virtue of an order dated 24.08.1998, a learned single Judge of this court directed that in case compensation had not been handed over to the respondent No.3 (Kishan Singh), a sum of Rs 3.3 lakhs shall not be disbursed to him. However, after the passing of the said order, the respondent No.3 approached the petitioner for settlement and the matter was compromised. As a consequence thereof, the writ petition being CW 3123/1998 was withdrawn on 22.07.1999.

4. On 16.01.2006, the Government of India through the Ministry of Home Affairs informed, *inter alia*, the Chief Secretary, Government of NCT of Delhi that in pursuance of the assurances given by the Prime Minister and the Home Minister during discussion on the Report of Justice Nanawati Commission of Inquiry into the 1984 Riots in the Lok Sabha and the Rajya Sabha, the matter had been considered by the Government and it had been decided to sanction, *inter alia*, the payment of an *ex-gratia* amount of Rs 3.5 lakh in each case of death during the riots. The said *ex-gratia* amounts were to be in addition to the amounts already paid by the respective State Governments. The entire expenditure was to be borne by the Central Government, though routed through the State Government. The said communication dated 16.01.2006 also stipulated that:-

> "(iv) No new claims for grant of ex-gratia for death or injury would be entertained. Only those who received ex-gratia earlier should be eligible for the enhanced

> additional ex-gratia amount. However, if there are any pending or disputed cases which are awaiting decision for want of the necessary proof / evidence, such cases can be considered if they are finally accepted as genuine claims."

5. It was contended on behalf of the petitioner that applications had been invited from the family members of the riot victims for the grant of additional *ex gratia* relief. The additional relief that is to be given in respect of the deaths of Ishwari Kaur, Laxman Singh, Sajan Singh and Laxmi admittedly comes to Rs 14 lakhs. The petitioner also submitted her application with the respondent No.2. However, she has been informed that she will not get the compensation on account of the death of her daughter and two grand children because the compensation amount can be disbursed only to those persons who were paid earlier. It is in these circumstances that the present writ petition has been filed.

6. The case of the petitioner is that the enhanced compensation amount of Rs. 14 lakhs be paid to the petitioner and Kishan Singh (Respondent No.3) in equal measure. Meaning thereby, that the petitioner should be paid Rs 7 lakhs and Kishan Singh (Respondent No.3) should be paid Rs 7 lakhs. It was contended by the petitioner that the petitioner lost her daughter, whereas Kishan Singh lost his son. It is further contended that both the petitioner and Kishan Singh lost their grand children (Sajan Singh and Laxmi). Therefore, according to the petitioner, there is no difference in the position of the petitioner and that

of Kishan Singh (Respondent No.3) and, therefore, both of them are equally entitled to receive the compensation. On the other hand, it has been contended on behalf of Kishan Singh that the entire amount of Rs 14 lakhs is to be paid to him alone and nothing to the petitioner (Smt Ganny Kaur).

7. It was contended on behalf of the petitioner that the general rules of succession provided in Section 15 of the Hindu Succession Act, 1956 do not provide any indication with regard to the compensation on account of death of a girl. It was submitted that this court has to decide whether the non-obstante clause of Section 15 (2) (a) would be applicable in the case of compensation and whether it would have overriding effect over Section 15 (1) (b). Pertinent questions were also raised with regard to the eligibility of the parents of a married girl with respect to compensation for her death. It was also submitted that upon the marriage of the daughter, the parents do not divest themselves of their responsibility to look after her well-being. The traditional view of giving away the daughter at the time of marriage for all times to come does not hold good any more. It was submitted that judicial notice can be taken of the multitude of dowry harassment cases and cases of cruelty on the part of the husband and the girl's in-laws. In such situations, the parents of the girl have to suffer not only the financial burden, but also the mental trauma associated therewith. In this context, it was submitted that if the compensation is granted in this case only to Respondent No.3, then it would run counter to all the

principles of fairness and equity and would mean that the State as well as the courts give recognition to the rights of the parents of the husband but none to the rights of the parents of the wife.

8. The SDM (Riots Cell, 1984), Preet Vihar, Delhi in his counter-affidavit has stated that the petitioner has no *locus standi* to approach this court. It is further stated that an *ex tratia* payment was sanctioned to the surviving family members of each right victim and, accordingly, an amount of Rs 10,000/- was paid to Respondent No.3 as the surviving member of the family. This was later on enhanced to Rs 20,000/- and further enhanced to Rs 3.5 lakhs, including the above amounts. The entire compensation amount till date was paid to the respondent No.3. The said amount has now been further enhanced to another Rs 3,50,000/- in respect of each death in addition to the earlier amount. According to the respondent No.2, the said amount has to be disbursed only to the persons who had earlier been paid and as per the records the entitlement stands in favour of the respondent No.3 only since he had received the earlier payment also. It was further stated that:-

> "No new person can take place of respondent no.3 as per the succession."

9. The counter-affidavit filed by the Respondent No.3 (Kishan Singh) discloses that he whole-heartedly supports the stand taken by the respondent

No.2 that he alone is entitled to receive the enhanced compensation because he was paid the compensation earlier. It was also contended on behalf of the respondent No.3 that the *ex gratia* compensation was granted earlier on the basis of Hindu Succession Act, 1956 after proper inquiries and verification and the enhanced amount has to be awarded on the same basis. It was submitted by the respondent No.3 that the compensation is to be paid to the legal heirs of the deceased—married women and her children—as per the hierarchy provided in the Hindu Succession Act, 1956 which places the heirs of her husband on a higher footing than her mother.

10. The learned counsel for the respondent No.3 submitted that the amount of compensation was payable to the legal representatives and, according to him, Section 2 (11) of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC') which defines legal representative would be applicable. Section 2 (11) of the CPC defines legal representative to mean a person who in law represents the estate of a deceased person.

11. The learned counsel for the respondent No.3 further submitted that the law contemplates two categories of compensation on the death of a person. The first is the pecuniary loss sustained by the dependent members of the family of the deceased. The second is a loss caused to the estate of the deceased as a result of such death. It was contended that where the claim is by

the legal representatives of the deceased who are not dependents of the deceased, the basis of award of compensation is the loss of estate, i.e., the loss of savings by the deceased. It was, therefore, contended that while deciding the entitlement of claims, the definition of legal representatives in Section 2 (11) of the CPC and the personal laws of the deceased should not be overlooked.

12. The learned counsel for the respondent No.3 referred to various provisions which deal with compensation in death cases under different Acts. The Acts being the Indian Fatal Accidents Act, 1855, The Motor Vehicles Act, 1923, The Railways Act, 1989, The Employees State Insurance Act, 1948, The Insurance Act, 1938 and the Payment of Gratuity Act, 1972. He also referred to the following decisions:-

i) ***Gobald Motor Service Ltd and Another v. R.M.K. Veluswami and Others*****: AIR 1962 SC 1 (7);**

ii) ***Gujarat State Road Transport Corporation, Ahmedabad v. Ramanbhai Pradhatbhai and Another*****: AIR 1987 SC 1690;**

iii) ***New India Assurance Co. Ltd v. Ashwin Vrajlal Rajgor*****: IV (2005) ACC 304 (DB);**

iv) ***A. Manavalagan v. A. Krishnamurthy & Others*****: I (2005) ACC 304 (DB);**

(v) ***Sarabati Devi v. Usha Devi*****: 1984 (6) DRJ 190;**

vi) ***Maharashtra State Road Transport Corporation v. Darabkhan & Others*****: II (2005) ACC 678.**

vii) ***Veena Rani v. Mangat Ram & Another*****: 1992 (1) ACC 485 (487) (P&H)**.

13. The learned counsel for the respondent No.3 concluded by saying that the position in law on entitlement of compensation under the various Acts and the judgments would make it safe to conclude that:-

a) The compensation / damages in respect of death of a person forms part of the Estate of a deceased;

b) The basis for award of compensation / damages is loss of estate and pecuniary loss; and

c) The amount of compensation / damages can be claimed by dependents / legal representatives / heirs of such deceased person in accordance with the law of succession governing them.

14. It was submitted that in the present case, both the parties are governed by Hindu Succession Act, 1956. Smt Ishwari Kaur and her two children died intestate. As per the rules of succession, in Sections 8, 15 and 16 of the Hindu Succession Act, 1956, the respondent No.3 is on a higher footing in comparison to the petitioner. It was further submitted that the petitioner neither represents the estate of the deceased nor was she ever financially dependent on her married daughter and her two deceased grand children. It was also suggested that the petitioner is residing at Village Latifpur, District Meerut, U.P. with her three sons, namely, Surender Singh, Tirath Singh and Bachan Singh.

15. Having considered the submissions made by the counsel for the parties, I am of the view that the compensation awarded in respect of the death of 1984 Riot victims cannot be equated with estate of an intestate which devolves as per the principles of succession and inheritance prescribed under personal laws. The compensation which is in question was never part of the property held by the deceased, therefore, in my view, there can be no question of there being any succession thereto or inheritance in respect thereof. The reference to the Hindu Succession Act, 1956 made by both the parties, therefore, would be irrelevant. The *ex gratia* compensation that is provided by the State is not under any personal law, but under the secular laws of the State governed by the principles enshrined in the Constitution of India and in particular Article 21 thereof because there has been a loss of life which it was the duty of the State to have protected. When the compensation is provided by the State, the State is blind to the religion of the parties as also to the personal laws that may be followed by them based on their religion. The State has to provide compensation so as to somewhat assuage the hurt, both financial as well as mental which the surviving members of the family feel every day of their lives. There have been a number of cases where compensation has been awarded for custodial deaths, deaths due to negligence of the State or some agency of the State, for crime victims, etc. These decisions are too well-known to be reproduced herein. Compensation in all such cases has been awarded in two parts. The first part being the standard compensation or what is known as

'the conventional amount' which is awarded for the mental pain and agony, loss of consortium, loss of company, etc. The second part is the compensation for pecuniary loss which has relation to dependency.

16. The compensation in question has to be viewed from this perspective, i.e., standard compensation and compensation for pecuniary loss. Insofar as both these elements are concerned, there is no difficulty in straightway coming to the conclusion that the position of the petitioner is no different from that of the respondent No.3. The petitioner lost her daughter and her grand children as also her son-in-law. Kishan Singh (respondent No.3) lost his son, his grand children as also his daughter-in-law. The extent of the pain and hurt that could be suffered by both would not be any different. The agony of the loss of a daughter cannot be less than the agony of loss of a son. Similarly, the agony of the loss of the daughter's children cannot be any less than the agony of the loss of the son's children. I do not see how it can even be contended that the right of the respondent No.3 to receive compensation is on a higher footing than that of the petitioner. Reliance placed on the personal law of succession is of no consequence in this case. This is a matter of compensation being awarded by the State which does not function under any personal law. It only functions under the Constitution of India which has established it as a secular state. Wherever the relationship between the State and a Citizen is in issue, the personal law of the citizen has little or no

relevance. Personal laws operate mostly in the domain of Citizen v Citizen contests.

17. This discussion is sufficient to conclude this case. However, for the sake of completeness, I would also like to refer to some relevant statutory provisions. Section 1 A of the The Indian Fatal Accidents Act, 1855 provides that a suit can be brought for compensation by the family of a person for loss occasioned to the family by the death on account of an actionable wrong. The said section provides specifically that every such action or suit shall be for the benefit of the "wife, husband, parent and child, if any, of the person whose death shall have been so caused." It is further provided in the said Section 1 A that in every such action, the court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought. It is further provided that the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the parties for whose benefit the suit was brought in such shares as the court by its judgment or decree shall direct. By virtue of this provision, the parents of a woman as well as the parents of a man would be entitled to compensation. It is also clear that if there were more than one person entitled to damages, then the same would have to be apportioned by the court as per its judgment or decree. Significantly, it has not been indicated that the personal law would apply. The

apportionment has been left to the court which, in any event, when no specific direction is given by a statute, has to decide according to justice, equity and good conscience. The manner of paying the compensation to the persons who are entitled to receive compensation under Section 357 of the Code of Criminal Procedure, 1973 in respect of offences resulting in death is the same as provided under the Indian Fatal Accidents Act, 1855 [See: Section 357 (1) (c) Cr.P.C.]. The same principles would have to be applied in the present case as compensation is being paid in respect of the deaths of the riot victims which are definitely victim of crime.

18. When this court in exercise of its writ jurisdiction is called upon to determine the apportionment of the compensation between the petitioner on the one hand and Kishan Singh (respondent No.3) on the other, it cannot but act equitably. As already pointed out above, there is no difference whatsoever between the position of the petitioner and that of Kishan Singh insofar as the death of Ishwari Kaur, Laxman Singh, Sajan Singh an Laxmi are concerned. The only manner in which the compensation, to my mind, would serve the ends of justice, would be by directing that the compensation be awarded not according to personal laws, but equitably to the next of kin. The only two claimants are the petitioner and the respondent No.3 and, therefore, I direct that the *ex gratia* amount of Rs 14 lakhs which is to be awarded now in respect of the deaths of Ishwari Kaur, Laxman Singh, Sajan Singh and Laxmi be paid

to the petitioner and Kishan Singh (respondent No.3) in equal measure. A sum of Rs 7 lakhs be paid to the petitioner and a sum of Rs 7 lakhs be paid to the respondent No.3. These directions be complied with by the respondents 1 and 2 within four weeks.

The writ petition stands disposed of. No order as to costs.

BADAR DURREZ AHMED
(JUDGE)

July 04, 2007
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